IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 624 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MISTRI JAYANTILAL MAGANLAL THRO' POH BHARATBHAI DAMODARDA

Versus

PRAJAPATI KANTILAL HARIBHAI

Appearance:

1. Civil Revision Application No. 624 of 1997

MR VC DESAI for Petitioner No. 1

MR UA TRIVEDI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/03/2004

ORAL JUDGEMENT

The present Civil Revision Application is directed against the judgment and order dated 22-1-97,

passed by the learned 3rd Extra Assistant Judge, Mehsana, in Regular civil Appeal No.71 of 1996, by which the appellate Court has allowed the appeal filed by the present respondent No.1 by setting aside the order dated 15-7-96, passed by the learned Joint Civil Judge (J.D.) Visnagar, in Regular Civil Suit No.82 of 1993.

2 The brief facts of the case are as under :
Respondent No.1 herein instituted a civil suit, being Regular Civil Suit No.82 of 1993, for a declaration and injunction against the respondent No.2-Panchayat, restraining the said Gram Panchayat from dispossessing the plaintiff from the suit plot which is in possession of the plaintiff and which belongs to the Gothva Gram Panchayat. The plaintiff has also sought for a declaration against the Gothva Gram Panchayat that the notice dated 4-8-1993 given to him by the respondent No.2 is illegal. In the said suit, the present petitioner subsequently submitted an application, requesting the Court to join him as party-defendant No.2 and the trial Court granted such permission and, accordingly, the petitioner was permitted to be joined as defendant No.2 in the said suit. As found by the lower appellate Court, the Panchayat did not file its appearance before the trial Court in the aforesaid suit. The petitioner, who was subsequently joined as party-defendant No.2, has submitted his written statement Exh.30. The present petitioner thereafter submitted an application Exh.43 requesting the Court to reject the plaint under Order VII Rule 11 (d) of the Code of Civil Procedure on the ground that before filing of the suit, the plaintiff has not issued statutory notice to the respondent No.2-Panchayat under Section 320 of the Gujarat Panchayats Act and since the plaintiff has failed to comply with the mandatory provisions of issuing notice to respondent No.2 under Order VII Rule 11 (d) of the Code of Civil Procedure, the suit is required to be dismissed.

3. The learned trial Judge, after hearing both the parties, allowed the said application and rejected the plaint under Order VII Rule 11 (d) of the Code of Civil Procedure on the ground that the suit is not maintainable for want of statutory notice.

4. Against the aforesaid order, respondent No.1 herein, who is the original plaintiff, has filed Regular Civil Appeal No.71 of 1996 under Order 41 Rule 1 and Section 96 of the Code of Civil Procedure. The appellate Court came to the conclusion that the present petitioner, who is defendant No.2 in the suit, is an individual party

and therefore, it was not open for defendant No.2 to raise such point, as, such point can be raised only by the authority concerned, i.e. respondent No.2-Panchayat. The lower appellate Court, therefore, ultimately allowed the said appeal and set aside the order of the trial Court, by which the trial Court rejected the plaint. The suit is accordingly restored to the file by the aforesaid order of the lower appellate Court. It is the aforesaid order of the lower appellate Court which is impugned in this petition at the instance of original defendant No.2.

5. During the pendency of this Civil Revision Application, further proceedings of the suit are already stayed by this Court. This Civil Revision Application is pending in this Court since 1997. It is required to be noted that the petitioner, instead of preferring a Second appeal under Section 100 of the Code of Civil Procedure, has challenged the impugned order by way of this Civil Revision Application.

6. Mr. V.C.Desai, learned advocate for the petitioner, submitted that the lower appellate Court should not have reversed the finding of the trial Court, as, according to him, it is an admitted fact that no statutory notice was served upon respondent No.2-Panchayat by the plaintiff before filing of the suit.

7. It is required to be noted that it is an admitted fact that the Panchayat has not raised such objection before the trial Court that the suit is not maintainable against it for want of issuance of the statutory notice. The present petitioner was subsequently joined as defendant No.2 at his own request. At this stage, reference is required to be made to the decision in Begum Noorbanu and others v. Deputy Custodian General of Evacuee Property A.I.R. 1965 SC 1937. The aforesaid case is in connection with the Administration of Evacuee Property Act, 1950. While considering the scheme of the aforesaid Act, the Apex Court has held as under :

> "The notice contemplated by S.7 of the Act is in the first place intended to provide an opportunity to the person whose property is in the opinion of the custodian an evacuee property to satisfy the custodian that he is not an evacuee as defined in S. 2 (d) of the Act. If he is not an evacuee his property cannot be declared evacuee property. Moreover, it is to afford an opportunity to persons who have not migrated to Pakistan to satisfy the Custodian

that the property which, in the opinion of the Custodian, is evacuee property does not belong to an evacuee or that an evacuee has no interest therein. Once, therefore, a person has been declared an evacuee after due notice, it would not be necessary to give notice to him thereafter under S.7. The earlier notification would be conclusive against the evacuee on the question of his migration to Pakistan and therefore no purpose will be served by issuing such notice. The only person who could claim to be interested in the property would, therefore, be those who have not migrated to Pakistan and who may possibly claim that the property is theirs and did not belong to the evacuee. For the purpose of S.7 it is immaterial whether a particular property had actually devolved on the evacuee before migration to Pakistan or devolved later. Whatever be the point of time at which the property devolved on the evacuee it would become evacuee property in the sense that it is liable to be declared as evacuee property and to vest in the Custodian, provided that the devolution occurred before the power of the custodian to declare any property as evacuee property came to an end under S.7-A of the Act.

An objection as to non-service of notice can properly be taken not by third parties, but only by the person on whom the notice is not served."

8. Of course, the point involved in the present petition is not directly covered by the said decision. However, it is certain that so far as the present petitioner is concerned, he is not even directly interested in respect of the issue raised by the plaintiff against the Panchayat. So far as the question about statutory notice is concerned, such ground of non-service of statutory notice is available only to the statutory body or the Government itself. Except the Government or statutory body, no other person is entitled to receive the statutory notice and therefore, naturally, the government or the concerned statutory body itself can waive the objection or take the objection regarding non-issuance of the statutory notice. As per the provisions of the Panchayat Act, the notice is required to be given to the Panchayat before instituting such suit and it is for the Panchayat to take the aforesaid point before the Court and such argument is therefore, not available to defendant No.2-the present petitioner. The

lower appellate Judge has rightly found that the said provision is enacted in order to give protection to the authority concerned, against whom any vexatious proceeding is filed. The authority can always waive such requirement. Therefore, I am of the view that the petitioner has no right to raise such objection before the Court, as, it is for the concerned authority to raise such objection, for whose benefit the provisions are made in the Act. The statutory authority or body can always waive such objection, as, ultimately it is for their benefit such provision is made in the Act. Such statutory notice is required to be given only to the statutory body or the Government, as the case may be, and, therefore, such point cannot be adjudicated at the instance of any individual party, as, the individual party is not even required to be served with any such notice. In this connection, reference is required to be made on a decision in Gaja and others v. Dasa Koeri and others A.I.R. 1964 Allahabad, 471 wherein, in paragraph 5, it is held as under:

"The object of a notice under section 80 is well recognized. It is to acquaint the authorities mentioned in the section of the facts and circumstances which are said to necessitate the institution of the threatened suit and to afford them an opportunity to take stock of the situation and avoid litigation, if so advised, by settling the claim or making amends. The section is thus intended to grant to such authorities a special protection for their own benefit of which, if they so choose, they may avail. It is also well established, and on the basis of this accepted purpose of Sec.80, that the objection to the entertainability of a suit for want of notice may be waived by the authorities concerned. It is sometimes assumed as indeed was done by the learned counsel for the appellants in the course of his arguments, that the imperative nature of the requirement of Sec.80 precludes the possibility of waiver and effect to the bar created by it must be given whether or not any objection is taken in that behalf. The assumption is erroneous and its erroneousness was clearly pointed out by the Privy Council in the case of Vellayan Chettiar v. Government of the Province of Madras, AIR 1947 PC 197 in the following emphatic words :-

"There is no inconsistency between the propositions that the provisions of the section are mandatory and must be enforced by the court

and that they may be waived by the authority for whose benefit they are provided."

9. The lower appellate Court was therefore, perfectly justified in coming to the conclusion that it is not open for a third party to raise such an objection that the suit is not maintainable for want of issuance of statutory notice. At this stage, reference is required to be made to the decision in Vellayan Chettiar and others v. The Government of the Province of Madras and others A.I.R. (34) 1947 Privy Counsil 197, wherein it is held as under:

"Section 80, according to its plain meaning, requires that there should be identity of the person who issues the notice with the person who brings the suit. Where a notice has been given on behalf of one plaintiff stating his cause of action, his name, description and place of residence and the relief which he claims, a suit cannot then be instituted by him and another.

In the said decision it is further held as under :

"The notice required to be given under S.80 is for the protection of the authority concerned. If in a particular case he does not require that protection and says so, he can lawfully waive his right to the notice.

10. Under the circumstances, I am of view that the trial Court was obviously in error in rejecting the plaint Order VII Rule 11 (d) of the Code of Civil Procedure on the ground that the suit is not maintainable for want of issuance of statutory notice to the respondent No.2-Panchayat under Section 320 of the Gujarat Panchayats Act, as, the Panchayat itself has not taken any objection and such point cannot be decided at the instance of a third party, i.e. the present petitioner. The order of the lower appellate Court is, therefore, not required to be interfered with. I do not find any substance in the present Civil Revision Application and therefore, it is rejected. Rule is discharged. Interim relief stands vacated.

11. Mr. Desai at this stage submitted that as the suit is of the year 1993, the same may be expedited. It is required to be noted that since 1997 because of the interim relief granted by this Court, the suit is stayed. However, considering the fact that more than 11 years

have passed after filing of the suit and still the suit is pending before the trial Court, the trial Court is directed to expedite Regular Civil Suit No.82 of 1993 and dispose of the same, latest by 30th April, 2005. However, this is the outer limit and the Court shall try to dispose of the said suit even before the aforesaid date.

Copy of this order be sent to the trial Court forthwith so that the suit can be decided within the stipulated time.

(P.B.Majmudar, J.)

*mithabhai